

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
SMITH BROTHERS FARMS, INC. )  
Appellant, )  
vs. )  
PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )  
Respondent. )

PCHB No. 326

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

The formal hearing on the appeal of Smith Brothers Farms, Inc. to a Notice of Civil Penalty of \$50.00 for an alleged open burning violation of respondent's Regulation I came before the Board with W. A. Gissberg presiding, and member, James T. Sheehy, in attendance, on July 24, 1973 in Seattle, Washington.

Appellant appeared by and through its President, Daniel P. Smith; respondent appeared through its attorney, Keith D. McGoffin.

Having heard the testimony and being fully advised, the Board makes the following

FINDINGS OF FACT

I.

Appellant is the owner of real property used for farming purposes in King County, Washington. Daniel P. Smith was approached by three youngsters of the approximate age of sixteen years and they asked for and received his permission to cut alder trees on appellant's property. No charge was made therefore and the youngsters did not enter into any employment with appellant for such purposes. After the trees had been cut, the youths placed the limbs therefrom in one of appellant's open fields. Upon learning of this, Mr. Smith advised them to remove the brush and in so doing did not authorize them to start a fire nor did he contemplate that such would be done by them. However, they did start a fire on March 5, 1973 on appellant's property and proceeded to burn the limbs together with a rubber tire.

II.

A local off duty fireman, observing the fire, reported its existence to Mr. Smith, but by that time the fire had been put out. Mr. Smith was not aware of the fire until it had been extinguished.

III.

Section 9.02 of respondent's Regulation I, as amended, makes it unlawful to cause or allow any outdoor fire in an unrestricted area without a permit. Appellant did not have a permit.

From which the Board makes the following

CONCLUSIONS OF LAW

I.

The relationship of the three youths to that of appellant can at the

1 best be termed as that of independent contractor. The doctrine of  
2 respondeat superior does not apply since it cannot be said that they were  
3 acting as agents for appellant, or, even conceding that they were agents,  
4 they acted outside the scope of appellant's authority.

5 II.

6 Since appellant neither caused nor allowed any outdoor fire, it was  
7 not in violation of Section 9.02 of respondent's Regulation I, as amended.

8 From which the Board makes and enters this

9 ORDER

10 The appeal is sustained and Notice of Civil Penalty No. 771 is  
11 stricken and held for naught.

2 DONE at Lacey, Washington this 25<sup>th</sup> day of July, 1973.

13 POLLUTION CONTROL HEARINGS BOARD

14 W. A. Gissberg  
15 W. A. GISSBERG, Member

16 James T. Sheehy  
17 JAMES T. SHEEHY, Member